

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANDRES GAVINO ALVAREZ DE LA LLANA M.D.)

File No. 800-2015-014189

**Physician's and Surgeon's
Certificate No. A54374**

Respondent

DECISION

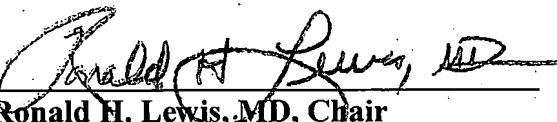
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 21, 2019.

IT IS SO ORDERED February 19, 2019.

MEDICAL BOARD OF CALIFORNIA

By:



**Ronald H. Lewis, MD, Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TRINA L. SAUNDERS
Deputy Attorney General
4 State Bar No. 207764
California Department of Justice
5 300 So. Spring Street, Suite 1702
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6 Telephone: (213) 269-6516
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-014189

13
14 ANDRES GAVINO ALVAREZ DE LA
LLANA, M.D.,

OAH No. 2018060487

15 **STIPULATED SETTLEMENT AND**
16 **DISCIPLINARY ORDER**

17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Trina L. Saunders,
24 Deputy Attorney General.

25 2. Respondent Andres Gavino Alvarez De La Llana, M.D. (Respondent) is represented
26 in this proceeding by attorney Raymond J. McMahon, whose address is 5440 Trabuco Road,
27 Irvine, California 92620.

28 ///

3. On June 28, 1995, the Board issued Physician's and Surgeon's Certificate No. A 54374 to Andres Gavino Alvarez De La Llana, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-014189, and will expire on November 30, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-014189 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 25, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-014189 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-014189. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2015-014189, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 54374 issued to Respondent Andres Gavino Alvarez De La Llana, M.D. is hereby publicly reprimanded

1 pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This
2 Public Reprimand, which is issued in connection with Respondent's care and treatment of one
3 patient, as set forth in Accusation No. 800-2015-014189, is as follows:

4 *In 2015, you committed acts of negligence by failing to adequately document the results of*
5 *the patient's physical examination, documenting conflicting information regarding the patient*
6 *taking Coumadin, and incorrectly documenting the patient's ultrasound results, indicating that*
7 *she had deep vein thrombosis, when it was ruled out by ultrasound.*

8 B. EDUCATION COURSE. Within 60 calendar days of the effective date of this
9 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
10 program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or
11 course(s) shall be aimed at correcting areas of deficient practice or knowledge and shall be
12 Category I certified. The education course(s) will address treatment of deep vein thrombosis,
13 among other areas of internal medicine. The educational program(s) or course(s) shall be at
14 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
15 requirements for renewal of licensure.

16 Respondent shall submit a certificate of successful completion of each course taken to the
17 Board or its designee not later than 15 calendar days after successfully completing each course.
18 Following the completion of each course, the Board or its designee may administer an
19 examination to test Respondent's knowledge of the course.

20 Failure to successfully satisfy the 40 hours of education described above within 180 days
21 of the effective date of the decision shall be a violation of this agreement and Disciplinary Order,
22 and shall constitute unprofessional conduct.

23 C. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the
24 effective date of this Decision, Respondent shall enroll in a course in medical record keeping
25 approved in advance by the Board or its designee. Respondent shall provide the approved course
26 provider with any information and documents that the approved course provider may deem
27 pertinent. Respondent shall participate in and successfully complete the classroom component of
28 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall

1 successfully complete any other component of the course within one (1) year of enrollment. The
2 medical record keeping course shall be at Respondent's expense and shall be in addition to the
3 Continuing Medical Education (CME) requirements for renewal of licensure.


4 A medical record keeping course taken after the acts that gave rise to the charges in the
5 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
6 or its designee, be accepted towards the fulfillment of this condition if the course would have
7 been approved by the Board or its designee had the course been taken after the effective date of
8 this Decision.

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, Raymond J. McMahon, Esq. I understand the stipulation and the
15 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
16 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
17 bound by the Decision and Order of the Medical Board of California.


18
19 DATED: 12-6-2018



ANDRES GAVINO ALVAREZ DE LA LLANA,
M.D.
Respondent

22 I have read and fully discussed with Respondent ANDRES GAVINO ALVAREZ DE LA
23 LLANA, M.D. the terms and conditions and other matters contained in the above Stipulated
24 Settlement and Disciplinary Order. I approve its form and content.

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26 DATED: Dec. 7, 2018



RAYMOND J. MCMAHON
Attorney for Respondent

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Dated: 12/7/18.

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

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53175934.docx

Exhibit A

Accusation No. 800-2015-014189

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 RICHARD D. MARINO
Deputy Attorney General
4 State Bar No. 90471
California Department of Justice
5 300 So. Spring Street, Suite 1702
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6 Telephone: (213) 269-6444
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *May 25* 20 *18*
BY *[Signature]* ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-014189

13 **Andres Gavino Alvarez De La Llana, M.D.**
14 **12480 Pocono Road**
15 **Apple Valley, CA 92308**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. A 54374,**

18 Respondent:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about June 28, 1995, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 54374 to Andres Gavino Alvarez De La Llana, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 30, 2018, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
8 that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 “(f) Any action or conduct which would have warranted the denial of a certificate.

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 6. Section 2266 of the Code states:

26 “The failure of a physician and surgeon to maintain adequate and accurate records relating
27 to the provision of services to their patients constitutes unprofessional conduct.”

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- 1 E. On April 6, 2015, the patient underwent an ultrasound test of her left leg. The
2 following result: "No sonographic evidence for acute or occluding deep venous
3 thrombosis of the left lower extremity[]" was recorded.
- 4 F. On April 16, 2015, the patient was seen in urgent care by Y.D., a physician assistant.
5 The patient complained of persistent swelling of her left leg. Y.D. recorded that he was
6 aware that the patient had been seen by her primary care physician on April 6, 2015,
7 and an ultrasound on that same date was "negative for clots." Furthermore, he reported:
8 "Left lower leg: redness/swelling/ttp on medical aspect. + edema to ankle. NO
9 swelling on calf." His assessment of the patient: Cellulitis of left lower leg. As a
10 result, Respondent ordered an antibiotic—namely, sulfamethoxazole-trimethoprim,
11 double strength, 800/160 mg oral tablet to be given twice daily for 10 days for treatment
12 of the cellulitis.
- 13 G. On April 20, 2015, the patient, again, was seen by Respondent. Although Respondent
14 documented that the reason for the patient's visit was to follow up on the results of the
15 urgent care visit on April 16, 2015, he failed to document the results of a physical
16 examination of the patient's left leg; and, too, he failed to record the results of the
17 ultrasound test of the left leg that was completed on that day—namely, April 20, 2015.
18 In the assessment section of his note, he documented, "Cellulitis of left lower leg," and
19 in the plan section he documented, "Administer Rocephin 1 gm IM x 1 dose today."
20 Despite the patient having undergone an ultrasound test of the left leg on April 6, 2015,
21 he wrote, "Request ASAP Doppler US of the Left Leg."
- 22 H. There is no documentation in Respondent's records that he, Respondent, informed the
23 patient of the results of her ultrasound test.
- 24 I. On April 28, 2015, the patient was seen by Respondent for follow up of her left leg
25 cellulitis. In the patient's records, under the history of present illness section,
26 Respondent wrote "On Coumadin 5 mg po q day." However, in the same progress note,
27 Respondent chronicled, "Has been off Coumadin x past 8 months."
- 28

- 1 J. Respondent documented that the patient complained of a mass on the left calf muscle.
2 His physical examination revealed a 3.5 x 5-inch tender, firm mass on her left leg.
3 Despite the fact that the April 6, 2015 ultrasound of the left leg was negative,
4 Respondent listed deep vein thrombosis (DVT) in the assessment section. He also listed
5 hematoma of the leg in the assessment section and documented that his plan was to
6 refer the patient to a vascular surgeon.
- 7 K. On June 15, 2015, the patient, again, was seen by Respondent—this time for increased
8 leg pain. Respondent did not document any physical examination of the patient's leg
9 on that day. He, however, did document, in the assessment section of the patient's
10 records, that the patient had cellulitis of left lower leg and a deep vein thrombosis
11 (DVT).
- 12 L. Respondent documented that the patient had been seen by a vascular surgeon who had
13 opined that the patient had phlebitis. Respondent did not receive a written report from
14 the surgeon and did not speak to him or, in the alternative, Respondent did not
15 document that he had received a report or had spoken to the physician.
- 16 M. Respondent documented in his plan section that he would request consult notes from the
17 vascular surgeon, and he would obtain a second opinion from a vascular surgeon at
18 Saint Joseph Medical Center in Orange, California.
- 19 N. On July 14, 2015, S.P., M.D., the vascular surgeon, assessed the patient and wrote a
20 letter to Respondent advising that the patient had venous insufficiency. S.P., M.D.,
21 recommended that the patient elevate her left leg when she was seated or in bed and to
22 wear compression hose during the day.
- 23 O. The following acts and omissions constitute extreme departures from the standard of
24 care:
- 25 1) On April 6 and 20, 2015, Respondent did not document the results of a physical
26 examination of the patient's left leg despite the patient complaining of pain in
27 that leg. Accordingly, Respondent either failed to assess, or he failed to
28 document having assessed, the patient's painful left leg.

- 1 2) On April 28, 2015, Respondent documented the following contradictory
2 statements: "On Coumadin 5 mg po q day," and "Has been off Coumadin x
3 past 8 months." These conflicting assertions precluded healthcare providers
4 from knowing if the patient was receiving Coumadin, a medication that can
5 cause untoward side effects.
- 6 3) On April 28 and June 15, 2015, Respondent documented that the patient had a
7 deep vein thrombosis even though an ultrasound on April 6, 2015 ruled out a
8 deep vein thrombosis.
- 9 4) Respondent failed to follow up the result of an ultrasound test that he ordered.
10 Moreover, he subsequently incorrectly documented that the patient had a deep
11 vein thrombosis, despite the ultrasound showing no evidence of a deep vein
12 thrombosis.

13 **SECOND CAUSE FOR DISCIPLINE**

14 10. Respondent Andres Gavino Alvarez De La Llana, M.D., is subject to disciplinary
15 action pursuant to Business and Professions Code section 2234, subdivision (c), in that he
16 committed repeated negligent acts during his care, treatment and management of one patient, as
17 follows:

18 A. Complainant refers to and, by this reference, incorporates paragraph 9, above,
19 as though fully set forth.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain Adequate and Accurate Records)**

22 11. Respondent Andres Gavino Alvarez De La Llana, M.D. is subject to disciplinary
23 action under Business and Professions Code section 2266, in that he failed to prepare and
24 maintain adequate and accurate patient records, as follows:

25 A. Complainant refers to and, by this reference, incorporates paragraph 9, above,
26 as though fully set forth.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 12. Respondent Andres Gavino Alvarez De La Llana, M.D. is subject to disciplinary
4 action under Business and Professions Code section 2234, generally, in that he committed
5 unprofessional conduct during his care, treatment and management of one patient, as follows:

6 A. Complainant refers to and, by this reference, incorporates paragraph 9, above,
7 as though fully set forth.

8 **PRAYER**

9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Medical Board of California issue a decision:

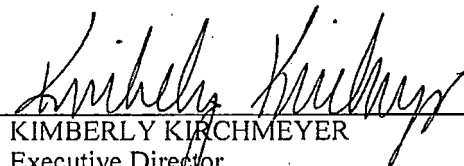
11 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 54374,
12 issued to Andres Gavino Alvarez De La Llana, M.D.;

13 2. Revoking, suspending or denying approval of Andres Gavino Alvarez De La Llana,
14 M.D.'s authority to supervise physician assistants and advanced practice nurses;

15 3. Ordering Andres Gavino Alvarez De La Llana, M.D., if placed on probation, to pay
16 the Board the costs of probation monitoring; and

17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: May 25, 2018



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant